

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Federal Insurance Company,

NO. C 05-01878 JW

Plaintiff,

**ORDER FOLLOWING CASE
MANAGEMENT CONFERENCE**

v.

St. Paul Fire & Marine Insurance Co., et al.,

Defendants.

The Court conducted a Case Management Conference on June 16, 2008. Counsel for the respective parties were present. At the Case Management Conference, counsel for Federal Insurance Co. represented that further clarification of the legal import of the Court January 25, 2008 Order would be helpful in moving this case forward. Accordingly, the Court confirms that the following issues were resolved by the Court's January 25, 2008 and February 22, 2008 and May 14, 2008 Orders:¹

- (1) Neither Fujitsu's original Complaints, nor the extrinsic evidence in the Fujitsu Litigation prior to June 18, 2004, triggered St. Paul's duty to defend on the basis of "physical damage to the tangible property of others;" and

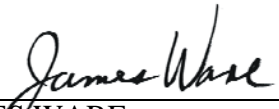
¹ (January 25, 2008 Order at 9:20-10:15, 12:14-13:5; Docket Item No. 88; February 22, 2008 Order, Docket Item No. 101; May 14, 2008 Order, Docket Item No. 135.)

(2) Neither Fujitsu's original Complaints, nor the extrinsic evidence in the Fujitsu Litigation prior to June 18, 2004, triggered St. Paul's duty to defend on the basis of the "sudden and accidental" exception to the "impaired property" exclusion.

The Court's determination of these issues is now the law of the case.

At the Case Management Conference, the parties also jointly represented that resolving the meaning of the "other insurance" provision in the relevant policy would help move this case toward trial. Accordingly, the Court sets a hearing on the issue for **September 22, 2008 at 9 a.m.** The cross-motions for summary judgment on this issue shall be filed in accordance with the Local Rules of Court.

Dated: June 17, 2008



JAMES WARE
United States District Judge

THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:

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Dated: June 17, 2008

Richard W. Wieking, Clerk

By: /s/ JW Chambers

**Elizabeth Garcia
Courtroom Deputy**